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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,124	04/13/2004	John F. Shanley	CMIS001USCNT7	6433
43027	7590	08/04/2009		
Philip S. Johnson, Esq. JOHNSON & JOHNSON ONE JOHNSON & JOHNSON PLAZA WH3221 NEW BRUNSWICK, NJ 08933-7003			EXAMINER BUL VY Q	
			ART UNIT 3773	PAPER NUMBER
			MAIL DATE 08/04/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/824,124

Applicant(s)

SHANLEY, JOHN F.

Examiner

Vy Q. Bui

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3773

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 April 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6-9, 10-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 6-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1448 or PTO-889)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 9 and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1:

- a. the recitation on line 4, "at which the adjacent struts each form a substantially V shape", is not understood because according to Fig. 4a, each strut 88 of the adjacent struts does not form a substantially V shape.
- b. lines 8-9: "the interconnected ends" lacks antecedent basis.
- c. line 12: "each of the bridging elements cross (should have been - - crosses - -?) the midline ..." is not understood.
- d. lines 14-16 (last three lines) is not understood because alternating ends defines apices, and not an apex, and "said midlines connected directly opposite the V shape apices are directed at each other" is also not understood.

Claim 9: line 2, "the interconnected struts" lack antecedent basis.

Claim 17:

- a. the recitation on line 4, "at which the adjacent struts each form substantially V-shapes", is not understood because according to Fig. 4a, each strut 88 of the adjacent struts does not form a substantially V shape.

- b. the recitation in lines 8-11 is not understood. The recitation appear recite two different midlines.
- c. line 12: "each of the bridging elements cross (should have been - - crosses - -?) the midline ..." is not understood.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-3, 6-9, 11-12, 14-17 are rejected under 35 U.S.C. 102(e) as being anticipated by Ehr et al-6,033,433.

As to claims 1-3, 11-12, 14-17, Ehr-'433 (please refer to a portion of Fig. 30 reproduced on next page) discloses a stent having S-shape bridging elements crossing three times at locations B, C, D the midlines AE of V-shapes as recited in the claims. Notice that a line can be a curved line or a straight line (please see definition 2 of term "line", for example, from one page of www.dictionary.com attached), line ABCDE as shown in Fig. 30 below is actually on a cylindrical surface of a stent and indeed parallel to the longitudinal axis of the stent therefore meet the limitation as recited in claims 1 and 17.

Further as to claims 7 and 12, the curved section or alternate ends where two adjacent struts in a same cylindrical tube are reasonably considered as hinges and circumferential links because the Ehr-'433's stent expand occurs mainly at these curved sections/ alternate ends.

Further as to claim 9, end A is substantially at 180 degrees out of phase from end E.

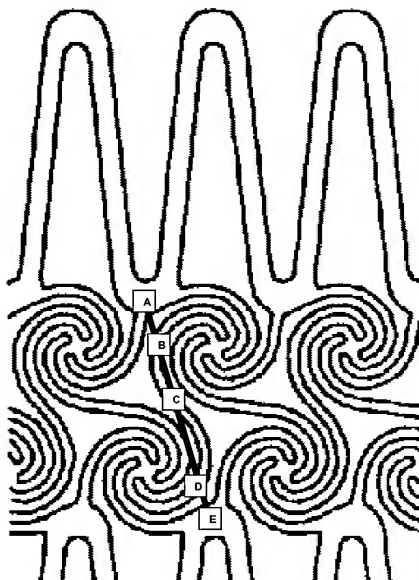


Fig. 30

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4, 13 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischell et al.-5,697,971 in view of Jang-6,235,053.

As to claims 1, 4, 13 and 17, Fischell-'971 (Figs. 2-3) discloses a stent 10 having cylindrical tubes having adjacent struts and S-shaped bridging elements substantially as recited in the claims, except for the connecting points of the S-shaped bridging elements located diagonally and bridging element less wider than strut as recited in the claims. However, Jang-'053 (Fig. 1-3, for example) discloses connecting points of the S-shaped bridging elements located diagonally (off-center connection) and S-shaped bridging elements less wider than adjacent struts. It would have been obvious to one of ordinary skill in the art at the time of the invention to move the connecting points to the locations as shown in modified Fischell-'971 stent in view of Jang-'053 (please, see Fig. 2 on next page) for this modified configuration provide Fischell-'971's S-shaped bridging elements longer, more flexible and having more stored length for expansion.

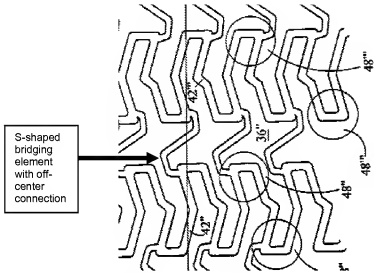


FIGURE 3

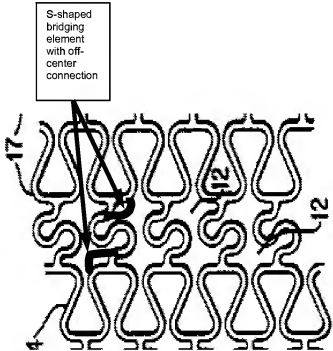


FIG. 2

Response to Arguments

Applicant's arguments filed 2/19/2009 have been fully considered but they are not persuasive.

The arguments suggested that the Ehr-'433 does not meet the limitation "a midline parallel to the longitudinal axis of the stent" as now recited in the independent claims 1 and 17.

However, the stent is basically of a cylindrical form, therefore midline ABCDE as shown in above "Ehr-'433's" Fig. 10 is indeed parallel to the longitudinal axis of the stent as recited in the claims.

It appears that the midline in the present invention is also a symmetrical line of a V-shaped apex where two adjacent struts in the same cylindrical tube interconnect. However, the claims do not provide any limitation to distinguish "a midline" in the claims and a midline ABCDE in "Her-'433" reference as shown above.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vy Q. Bui whose telephone number is 571-272-4692. The examiner can normally be reached on Monday-Tuesday and Thursday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on 571-272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Vy Q. Bui/
Primary Examiner, Art Unit 3773